

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

FILED

98 JAN -5 PM 3:09  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

MARCUS E. WYNN,

Plaintiff,

vs

CIVIL ACTION NO. 97-RRA-1585-M

STATE OF ALABAMA; HEARINGS AND  
APPEALS DIVISION OF THE ALABAMA  
DEPARTMENT OF INDUSTRIAL  
RELATIONS; ALABAMA DEPARTMENT  
OF INDUSTRIAL RELATIONS; AND  
JAMES WEBB, Individually and in his  
capacity as Chief of Hearing and Appeals  
Division of the Alabama Department of  
Industrial Relations.

Defendants.

*fel*  
**ENTERED**

JAN 5 1998

MEMORANDUM OF OPINION

The court has considered the entire file in this action together with the Magistrate Judge's Report and Recommendation and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the recommendations of the Magistrate Judge as the findings and conclusions of the court.


Wherefore, the defendants' motion for summary judgment on the ADEA claim on the ground that the EEOC complaint was untimely filed is due to be denied; the court will withhold ruling on the defendants' motion to dismiss the ADEA claim on the ground of

Eleventh Amendment Immunity, pending a decision by the Eleventh Circuit on this issue.

The plaintiff's § 1983 claims are preempted by the ADEA, and are therefore due to be dismissed.

An appropriate order will be entered.

DONE, this 5<sup>th</sup> day of January, 1998.

A handwritten signature in black ink, appearing to read 'Edwin L. Nelson', written over a horizontal line.

EDWIN L. NELSON,  
UNITED STATES DISTRICT JUDGE